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# INTERNET FREEDOM IN BELARUS

## Digest of Legislation and Practice

IN THIS ISSUE



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## NEW RESTRICTIONS OF ACCESS TO INFORMATION

On 21 March 2014 Order of the Operations and Analysis Centre of the President of the Republic of Belarus (OAC) No. 10 dd. 31 January 2014 was published and came into force.

Major amendments are related to the procedure of receiving access to the information which dissemination is restricted "if receipt of this information is required to perform tasks and discharge functions such agencies and organisations are assigned pursuant to the competence set forth by legal acts" (pursuant to clause 8 of Measures to Improve Use of the National Internet Segment Presidential Decree No. 60 dd. 1 February 2010. According to Presidential Decree No. 60 and the OAC's Decree No. 52 a governmental agency or organisation was permitted to send a grounded request to obtain access to the websites in the limited-access list directly to the OAC. Order No. 10 provides for a procedure consisting of several steps:

• A governmental agency or organisation shall address their superior agency;
• Should the superior agency deem it necessary, it shall send a letter to the OAC stating the legal basis and reasons for grant access to the information of restricted dissemination as well as the name of the Internet provider and the details of the contract under which such services are rendered;
• The OAC should resolve whether to grant or deny access to such information within 10 business days;
• The OAC should notify the governmental agency and the Internet services provider on its resolution in writing.

The list of the organisations not allowed to obtain access to the information of restricted disseminationhas been extended.

According to Presidential Decree No. 60, the following could be granted access to the information of restricted dissemination:

• Law-enforcement agencies;
• Prosecutors' offices and pre-trial investigation agencies;
• The agencies of the State Control Committee;
• Tax agencies;
• Courts;
• Educational and cultural institutions.

According to the OAC's Order No. 10, educational and cultural institutions may not be granted access to the websites of the limited-access list.

## ACCESS TO INFORMATION AND PERSONAL DATA PROTECTION IN THE AMENDED INFORMATION, INFOMATIZATION, AND INFORMATION PROTECTION LAW

On 11 April the amended Information, Informatization, and Information Protection Law No. 455-Z dd. 10 January 2008 came into force. The new law extends the list of publicly available information by including the information about the duties of natural and legal persons and the procedure of dischargingthe said duties as well as information about the socio-economic development of the Republic of Belarus and its political units into the category.

The forms of providing information by the governmental agencieshave been detailed compared to the previous wording of the law (article 21). The law has introduced a new method of dissemination and (or) provisionofpublicly available information on the governmental agencies' activities:holding public meetingsat which "natural persons"may be present (article 22-2). The information concerning the date, time, location, and agenda should be made available online (on the official websites) or offline (massmedia, institutions) five calendar days prior to the meeting at the latest.

A norm of mandatory publication of an annual report (publicly available information on the results of their work) for the previous year by the governmental agenciesis an important novelty. This information should be

published on the websites and in the media on 1 March at the latest.

The amended law has set firth the list of the information to be provided by the governmental agencies on the official websites mandatorily, which list has copied Certain Issues of Governmental Agencies and Organisations' Websites resolution of the Council of Ministers No. 645 almost literally. However, the list of categories of publicly available information (article 16) remains closed and the list of the information of restricted dissemination (article 17) open.

The amended law has introduced article 180-1 pursuant to which dissemination of theinformation for internal use may be restricted by resolutions of the President of the Republic of Belarus. This wording does not comply with the legislation in which the term "Presidential resolutions" is not defined.

An efficient mechanism of access to information as well as responsibility for violating the citizens' right to access to information are still not provided for by the law. The issues of personal data protection have not been assigned a detailed chapter of their own. The terminology still remains problematic.

In general, the amendments insignificantlyassist in creating an efficient mechanism of grantingthe citizens access to the governmental information and do not provide for proper grounds to regulate the procedure of collecting, storing, processing, and protecting personal data. The Belarusian legislators have rejected the path of passingspecial laws concerning personal data protection and access to information, although such an approach is a standard in the international practice.

## CYBECRIME CONTROL

In April 2014 A. Sushko, Head of the Crimes against Information Security and Intellectual Property Investigation Department, Main Investigation Department of the Investigative Committee of the Republic of Belarus, has announced the creation of the Cybercrime Control Centre in Belarus on the basis of one of educational institutions of Belarus to:

- improve the investigation quality of crimes against information security,
- increase the level of trust of the citizens towards the governmental agenciesensuring information security,
- develop and implement additional measures to protectthe citizens' rights and property.

Research of criminal law, criminal proceedings and forensics is intended to be carried out on the basis of the centre as well as regular meetings amongresearchers, law-enforcement agencies' and private sector representatives for the purpose of experience exchange and finding solutions of the existing problems as well as development of strategic approaches towards fighting cybercrime and creation of training and educational programmes on the topic.

Penalty for crimes against information security was legally defined in the Criminal Code of Belarus in 1999. Development of information technologies led to changes in old forms of crimes, as well as to appearance of absolutely new ones related to use of digital information and various computer systems. Theofficial statistics testify to the growth in the number of crimes discovered in this sphere. For instance, while 2,040 high-tech crimes had been uncovered in 2012, 2,558 were in 2013.

Overall, the list of crimes against information security defined in legislative and normative acts of the Republic of Belarus complies with the provisions of the Budapest Convention (2001). In early May 2012the Belarusian government had applied to accede to the Budapest Convention. The International Convention on Cybercrime and Additional Protocol for the Convention on Cybercrime are named among the normative acts that direct the activities of the Department for High-Tech Crimes Investigation on the website of the Ministry of Internal Affairs.The Republic of Belarus (Ministry of Justice, Ministry of Internal Affairs, State Security Committee) was an active participant of the project on cybercrime Eastern Partnership – Cooperation against Cybercrime CyberCrime@EAP in 2011-2013. Several conferences and seminars were held, a series of documents were developed, and a publication of evaluation of countries is planned as part of the project.

In 2013 the final document Strategic Priorities of Cooperation in the Field of Fight against Cybercrime in the Eastern Partnership countries was published.

## AMENDED TELECOMMUNICATIONS LAW TO ABOLISH BELTELECOM'S MONOPOLY AND INCREASE PROTECTION OF SUBSCRIBERS' PERSONAL DATA?

Law of the Republic of Belarus No. 172-Z dd. 1 July 2014 has significantly amended the Telecommunications Law (No. 45-Z dd. 19 July 2005). The major provisions of the Law shall come into force in 6 months up on publication–as of 9 January 2015.

According to the Law the Operations and Analysis Centreof the President of the Republic of Belarus (OAC) is included in the list of the agencies which carry out governmental regulation and management in the field of telecommunications.

The amendments also include the process of forming and using telecoms providers' databases of subscribers (article 56). Previously a telecoms provider was able to use data of its subscribers, including to develop and disseminateinformation and reference guides in various ways (in print, on magnetic media etc.) if the subscriber did not forbid such use in writing. The new legislation states that the prior written consent is required to use the subscribers' data.

The amended Law abolishes the exclusive right of an appointed provider to transmit international traffic and connect to the telecom networks of other countries. However, Beltelecom'spowers have notchanged.

The amended Law also introduces the term ofa "telecom services provider" whichis granted the right to provide telecom services without obtaining a special permit (license)to act in the communications field. The services providers will be covered by the legislative norms to the operators.

The draft law to amend the Telecommunications Law was drawn up and submitted to the House of Representatives of the National Assembly of Belarus in 2010 for the first time. The amended Telecommunications Law was passed upon new appointments of the heads of the Ministry of Communications and IT Penetration: S. Popkovasthe Minister for Communications and IT Penetration and D. Shedkoas a Deputy Minister.

## "HATE SPEECH" IN BELARUSIAN ONLINE MEDIA

In June the results of a statement monitoring were published concerning statements which "propagate, provoke or justify racism, xenophobia, anti-Semitism or other forms of aggression including aggressive nationalism and ethnocentrism, discrimination and animosity towards minorities and migrant" (Recommendation No. R (97) 20 of the Committee of Minsters to member states on hate speech <http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1997)020&expmem_EN.asp>).

The new initiative is being implemented by Journalists for Tolerance group within the campaign aimed at increasing social responsibility of the Belarusian journalists.

The monitoring will be held for six months (April-September 2014), the results are scheduled for publication every two months.

Journalists for Tolerance have analysed the contents of the publications of 35 media outlets, including online news outlets Charter97.org, naviny.by, nn.by, tut.by. It's worth noting that all the "traditional" news outlets included in the monitoring list have online versions.

Journalists for Tolerancehave considered the articleWe Will Never Be Brothers: Hymn of the Free Nations(Novy Chas) (http://novychas.info/palityka/my_nikoli_nie_budziem_bratami) to be the least correct one.

The least tolerant newspaper by the overall score has beenVo SlavuRodiny(To the Glory of the Motherland)(http://vsr.mil.by) which published four articles with high indices of incorrectness in two months.

The most number of negative remarks was discovered in relation to the citizenship/ethnicity category (32), the least (5) in relation to the religious denomination. However, it is the denomination statements which were the most incorrect (aggressive): they scored 32. The statements related to the EU, Slavs, the West, the former USSR etc. were a bit less antagonistic: they scored 25.5. The average score of gender-identity publications incorrectness was 18 according to the monitoring data.

The fact that “hate speech” characterizes analytical articles and news first and foremost is extremely alarming.

The main “producers” of aggressive statements were journalists.

The monitoring has also demonstrated that hate speech is not dependenton the political position of the media-outlet editorial office.At the same time, there was a correlation between hate speech and “geography”: incorrectness ratings of the regional media outlets were lower.

Journalists for Tolerance warn that the results of the first cycle cannot be the basis for broad assumptions, and it’s hard to disagree with them. However, the initiative has a lot of significance for attracting attention to the issues that previously were on the periphery of interests of both the journalists and the civil society as a whole.

• Bublikova, T. Hate Speech in Belarusian Media, April-May 2014 http://prezi.com/pzuus8ffpnaz/2014/

## IS PATIENT CONFIDENTIALITY GUARANTEED TO THE CITIZENS OF BELARUS?

The Russian bloggers found out about placing the photos at the end of April 2014<http://by24.org/2014/04/30/nurce_tanya_from_minsk_post_patients_photo_in_instagram/> but the public have not been informed about any measures taken in relation to the violations.

Olga Bartman, the ActingPress Secretary of the Ministry of Healthcare,answered journalists’ questions by stating that all the comments are provided upon requests. Salidarnasts newspaper had sent a formal request to the Minister of Health VasilyZharko on 6 June but did not receive any answer until 1 August 2014. And the Press Secretary of the Ministry of Healthcareinformed journalists that the Ministry would not provide any comments or information concerning the request. “Conclusions have been drawn without doubt but I may not tell you which ones”, O. Bartmananswered the journalists.

The fact that according to a poll conducted by the Belarusian Association of Journalists in September 2013 the Ministry of Healthcare remains the most closed governmental agency for the journalists stands out.  46% of the journalists polled claimed that they have issues requesting information from the Ministry of Healthcare. The Ministry of Health occupies the 23rdplace out of 44 in the rating of correspondence of the official websites of the national executive agenciesto the legislation requirements (Lawtrendmonitoring, 2013).

The Belarusian Association of Physicians hasmade a statement condemning the medical official’s unprofessional conduct. According to the lawyer Alexey Kazliuk, Legal Transformation Centre (Lawtrend) expert, the incident which had happened at a Minsk hospital concerns not only medical officials’ unprofessional conduct. Disseminating photos of patients in the operating theatreor other treatment rooms damages reputation of both the healthcare institution and the patients on the photos.

In this particular situation, there exist several methods of making the author of the photos accountable. It may be disciplinary, civil, administrative (art. 22.13 of the Administrative Offences Code) or criminal (art. 178 of the Criminal Code) responsibility, or several types in various combinations depending on the office held by the offender, circumstances, and consequences of the breach of confidentiality. In the majorityof cases,an application or a claim should be initiatedby the person whose rights have been infringed upon. Unfortunately, the practice of compensation for harm caused by unlawful dissemination of information about the private life of citizens is uncommon in Belarus. It must be said that in a civil

process the situation can also be viewed from the perspective of a suit to defend one's honour and dignity.

This case casts a shadow of doubt on the entire system of patient confidentiality protection, including photos, videos, outpatient cards, and databases etc.

## LAWTREND'S ACTIVITIES

*On 6 FebruaryLegal Transformation Centre Lawtrend presented the results of its monitoring of the official websites of the national executive agencies:*

> The official websites of 45 executive agencies of various levels which were analysed during the monitoring do not comply with the requirements of the legislation. The maximum score awarded (52% of the National Bank) testifies to this unfortunate result.
>
> The official websites of 45 national agencies have news, information on recent activities of those agencies, and contact information. However, the information about administrative procedures, superior agencies and structural subdivisions, budget performance and public purchases, possibilities to appeal against the actions of a governmental agency and the procedure and terms of employment with the agency is provided not on all the websites and is not complete.
>
> The low ratings of the provided-information ratio are explained not only by the incompleteness of the mandatory categories of information. Difficulty of search extremely hinders access and use of the information provided by the national agencies.

*Legal Transformation Centre Lawtrend jointly with Alternative Youth Platform organised a seminar and discussion "Freedom and Security Online".*

*Mikhail Yakushev, Vice President of ICANN in Russia, CIS and Eastern Europe, read a public lecture Internet Governance in 2014: International Initiatives,Global Perspectives upon Legal Transformation Centre's invitation on 14 April.*

*On 23 April Legal Transformation Centre's expert Marina Sokolova presented a report at anapplied-science conference GovernmentalPolicy in the ICT Field. E-Government and Governmental E-Services organised within the 21stBelarusian Congress on Information-Society Technologies (TIBO 2014).*

*On 28 April Marina Sokolova, Lawtrend's expert, presented a report Will Belarus Approach Open Government Road?at a conference of the Internet Freedom Coalition. This issuewas discussedwithin the panel International Initiative of Open Government as One of the Ways to EnsureOnline Freedom in the Eastern Partnership Countries.*

*On 28 AprilLegal Transformation Centre Lawtrend held a round table Official Websites of Governmental Agencies: Discussion of Perspectives.*

> Freedom of information experts, governmental agencies' and organisations' representatives, experts on website accessibility for people with disabilities as well as developers and users of the governmental-agencies' websites took part in the discussion.
>
> The highest ratio of completeness of information about the governmental agency itself does not reach 60%. Information about administrative procedures is incomplete (forms that are mandatory for placing and are needed for administrative procedures are absent, the same is trueconcerning the information about the forms submission and filling-in as well as details of bank) and badly structured, which makes search a hard task. Even contact information of the governmental agencies is not presented as it should be (the ratio is 46.7% for district and municipal executive committees, 48.6% for regional ones).

On the websites of Minsk and Moguilyovcity and district executive committees,the information provision ratioconcerning court appeal procedures is 4%, administrative appeal procedures 11%. The information about open sittings is provided on the website of Soligorsk district executive committee only. The information about the governmental agency's implementation of the national budget for the previous fiscal year can be found on 12 out of 53 websites only. The websites of regional executive committees (CIR 66.7%) have higher usability than those of municipal and district committees (CIR 30/4%). The websites are badly adapted for people with impaired eyesight (CIR 48.6% for district and municipal committees of Minsk and MoguilyovRegions, 56.5% for regional committees).

*On 14-16 May 2014 Marina Sokolova, Lawtrend's representative, made a report Freedom and security online in Belarus: windows for opportunities at a seminar of Eastern Partnership countries' experts at which cybersecurity and personal data protection in the context of free access to the Internet resources and services were discussed.*

*On 25 June Lawtrend's experts took part in a round table conducted by the Belarusian Helsinki Committee. A Legal Transformation Centre (Lawtrend)'s researchFree Internet: Political Principles and Legal Norms. Belarus in Global Context was presented there.The key points of the document are as follows:*

• It is impossible to promote personal interests of the citizen as well as their participation in public affairs without exercising their right to information and access to information (including access to the information of governmental agencies) as demonstrated in theory and defined by the international norms.

• The right to personal privacy both online and offline as well as protection of personal data are required both to exercise the right of free speech online and to protect individuals fromunauthorised access to the data about them.

• The Belarusian legislation does not provide adequate variants of a balance between online freedom and security:

• Adequate regulation of personal data protection is still not ensured at the national level, legal relationships in this field are considered in fragmented acts which are not based on a single approach, and the legislation does not fully consider the need of adequate and equal protection of the analysed rights both online and offline.

• Improvement of regulation of legal relationships should be carried out taking into account the priority of freedom of speech and presumption of freedom of access to information, the need to establish a balance between freedom of speech and the right to privacy.

• Formation of a stable interest of non-governmental actors to the issues of using new information and communication technologies, including the Internet, for the purpose of sustainable development of the country, dictate an urgent need to organise active dialogue between the government, representatives of the civil society, business and academic communities.